

**IN THE SIXTH CIRCUIT COURT OF DAVIDSON COUNTY
TENNESSEE AT NASHVILLE**

IN RE:)

BRIDGESTONE/FIRESTONE and)
FORD MOTOR CO. TIRE CASES)
_____)

THIS DOCUMENT APPLIES TO ALL)
ACTIONS)
)

Case No. 01MD-2

FILED
2002 MAY -2 PM 1:44
RICHARD R. ROOKER, CLERK
D.C.

**ORDER DENYING MOTION TO DISMISS ON *FORUM NON*
CONVENIENS GROUNDS**

Defendants Ford Motor Company ("Ford") and Bridgestone/Firestone, Inc. ("Firestone") have filed motions asking this Court to dismiss these matters based upon principles of *Forum Non Conveniens* arguing that these cases should more properly be tried in the courts of Mexico. After a thorough review of all briefs, affidavits and exhibits submitted by the parties, as well as the arguments presented by counsel, this Court finds that said motions are not well-taken and should be DENIED.

The first step in the analysis of a *forum non conveniens* dismissal is to determine whether there exists an adequate and available alternative forum for resolution of a dispute, in fact such a motion presupposes the existence of such an alternative forum. See, *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 67 S.Ct. 839, 91 L.Ed. 10 (1947) The defendants have not convinced this Court that the courts in Mexico provide a truly adequate alternative forum that would allow the fair disposition of these cases. This Court has considered the holding by the United States Supreme Court in *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 102 S.Ct. 252, 70 L.Ed.2d 419 (1981) (which apparently has not been addressed by any Tennessee Appellate Court) and its holding that a Federal trial court should not give conclusive or substantial weight to the possibility of a less favorable remedy in the other forum. Such an opinion dealing with federal law is not binding on this Court but may be considered as persuasive authority.

This Court respectfully disagrees with *Reyno* and finds that a court considering a motion to dismiss based upon *forum non conveniens* should consider whether the plaintiff or defendant would be unfairly treated in the proposed alternative forum. While not conclusive, the fact that a plaintiff would encounter unfair limitations on the presentation of a claim and/or the recovery of damages

provides a basis for determining that an adequate alternative forum does not exist.

In these unique cases that are primarily based upon concepts of product liability, the vagaries of Mexican law and the unique evidentiary obstacles presented by Mexican procedure would unjustly penalize plaintiffs by impeding their ability to fairly present their claims.

Even assuming *arguendo* that such an alternative forum has been established, however, defendants' motions fail. Our Supreme Court has set forth the basic guidelines for application of the doctrine of *forum non conveniens* in ***Zurick vs. Inman*, 426 S.W.2d 767 (Tenn 1968)**. There the Court explained that

where in a broad sense the ends of justice strongly indicate that the controversy may be more suitably tried elsewhere, then jurisdiction should be declined and the parties relegated to relief to be sought in another forum. [emphasis added] Id., at 769

The Court established some of the factors that should be considered:

Important considerations are the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive. There may also be questions as to the enforceability of a judgment if one is obtained. The court will weigh relative advantages and obstacles to fair trial. It is often said that the plaintiff may not, by choice of an inconvenient forum, 'vex,' 'harass,' or 'oppress' the defendant by inflicting upon him expense or trouble not necessary to his own right to pursue his remedy. But unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed.

Factors of public interest also have place in applying the doctrine. [emphasis added] Id., at 772

Clearly the burden rests upon defendants to submit sufficient factual information to prove that it would be unfair to require defendants to proceed in this court. Despite the earnest argument of Ford and Firestone, the defendants have simply failed to present sufficient facts that "strongly" convince this Court that a trial in this jurisdiction would be unfair to them. To the contrary, it appears that the interests of justice would be best and most efficiently served by conducting the trials in the cause in Nashville, Tennessee.

The fact that the underlying vehicular accidents occurred in Mexico is not a factor to be considered. **Id. at 773** Also, the nationality of the plaintiffs alone does not require

that these cases be tried in Mexico. **Id.**

Among the more important factors are the cost of litigation and access to evidentiary proof. Defendants allege that since the underlying accidents occurred in Mexico, that numerous reports and records will need to be translated into English. This Court disagrees and finds that the astronomical cost of translating the exceedingly large number of technical documents and the equally daunting task of accurately translating complex technical terms weigh heavily against transferring these actions to the foreign courts in Mexico.

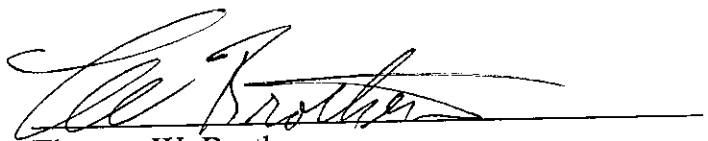
Defendants argue that the difficulties associated with obtaining testimony of Mexican nationals support dismissal. They point out that potential witnesses may be Mexican nationals who may be unwilling or unable to attend trial and that the deposition process in Mexico is difficult. This Court finds that many of the same difficulties would arise even if these cases are tried in Mexico if witnesses reside in different states of Mexico. It is important to note that these actions are premised upon the theory of product liability and that the critical testimony concerning the design and testing will come from English speaking witnesses.

This Court finds that the application of foreign law in these cases, if required, does not present such a formidable obstacle as to require dismissal.

Contrary to the defendant's reference to "scarce" judicial resources, this Court is not so congested that the trial of these cases would cause a disruption of judicial services.

Further, there stand allegations of conspiratorial activities that purportedly occurred in Davidson County. This factor strongly supports trial in this forum.

It is, accordingly, **ORDERED** that the Motions to Dismiss on *Forum Non Conveniens* Grounds filed by Ford Motor Company and Bridgestone/Firestone, Inc. are hereby **DENIED**. All other matters are reserved.


Thomas W. Brothers
Circuit Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on this the 2nd day of May, 2002 a copy of the foregoing Order has been mailed to the following:

STEVE NORTH
1215 Gallatin Pike South
Madison, TN 37115

STEVEN RILEY
SALVADOR HERNANDEZ
1906 West End Avenue
Nashville, TN 37203

JAMES SANDERS
A. SCOTT ROSS
150 Fourth Avenue North, Suite 2000
Nashville, TN 37219

STEPHEN MARCUM
3 Courthouse Square
P.O. Box 8
Huntsville, TN 37756

RICHARD DENNEY
LYDIA JOANN BARRETT
870 Copperfield Drive
Norman, OK 73072

JOHN MERRITT
917 North Robinson
P.O. Box 1377
Oklahoma City, OK 73101

RICHARD LAGARDE
24 Greenway Plaza, Suite 400
Houston, TX 77046

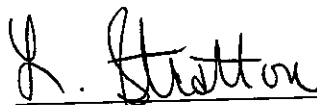
ROBERT LANGDON, J. KENT
EMISON, BRADLEY KUHLMAN,
MARK EVANS
911 Main Street, P.O. Box 220,
Lexington, MO 64067;

J. RANDOLPH BIBB
JONATHAN COLE
211 Commerce Street, Suite 1000
Nashville, TN 37201

MARY A. PARKER
209 10th Avenue South
Nashville, TN 37203

CHILTON DAVIS VARNER,
ROBERT D. HAYS
JOHNNY FRIEDMAN
191 Peachtree Street, N.E.
Atlanta, GA 30303-1763

COLIN SMITH
CHARLES E. JOERN
55 West Monroe Street, Suite 800
Chicago, IL 60603-5001



Deputy Clerk